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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,298	07/03/2003	Heather Gant	060713-1020	3955

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EXAMINER

CAMPBELL, KELLY E

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/613,298	Applicant(s) GANT, HEATHER	
	Examiner Kelly E Campbell	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to a wheeled cart, classified in class 280, subclass 47.24.
- II. Claim 15-16, drawn to a combination of the cart and the bag, classified in class 280, subclass 47.26.
- III. Claim 17-24, drawn to a luggage bag, classified in class 190, subclass 19.

Inventions I and II and Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombinations as claimed because the limitation of the wheeled bag pertaining to the first, second and third brackets, telescopically relatable via legs slidable with respect to one another are not necessary for providing a wheeled cart and bag combination. Also, the reinforced bag portions are not necessary for providing a wheeled cart and bag combination. The subcombination has separate utility such as a hand truck for transporting goods such as boxes not attachable to the hand truck or other heavy obscure objects. The subcombination of the equipment bag has separate utility as an article carrying device for transporting goods via a users shoulder and upper body strength.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with David Kelley on 12-21-2004 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kazmark (US 4,221,402).

Kazmark teaches a wheeled cart (10) for transporting bagged equipment including:

a first bracket member (17) having tubular legs of a first diameter,
first and second rotatable wheels (12) mounted at the bottom end of the bracket
(17)

a second bracket member (18) with third and fourth tubular legs, the outside diameter of each of the said third and fourth legs (18) being less than the inside diameter of the first and second legs (17) and the second bracket being slidable with respect to the first bracket, the third and fourth legs (18) being slidable within the first and second legs (17),

a third bracket including fifth and sixth tubular legs (19) having an outside diameter, less than the inside diameter of the third and fourth legs (18) of the second bracket and slidable with respect to the second bracket,

further including locating members (silent)) for holding the bracket members in the extended position;

wherein the fifth and sixth legs (19) are joined at the top via strength member (20);

strength members (silent) span the distance between first and second legs (17) and third and fourth legs (18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kazmark (US 4,221,402) as applied to claim 1 above, and further in view of Allen (US 3,788,659).

Kazmark teaches all aspects of the claimed invention as discussed above for claim 1, except a handle attached at the junction of the legs.

Allen teaches a cart (1) having legs (11) extending upwards to meet at cross member (12) and a handle (15) attached thereto at the junction of the legs (11).

It would have been obvious to one of ordinary skill in the art to modify the cart taught by Kazmark to include a handle (15) meeting at the junction of the legs of the invention in order to provide leverage and facilitate manipulation of the truck for the comfort of the user.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazmark (US 4,221,402) as applied to claim 1 above, and further in view of Osaki (US 5,685,552).

Kazmark teaches all aspects of the claimed invention as discussed above for claim 1, except support members pivotally attached to the strength member.

Osaki teaches a luggage carrier having strength members (19) and support members (39) forming a V-shape and the V being pivotally attached the center of strength member (19) for provided added support when collapsing the cart.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cart taught by Kazmark with a V-shaped support member as taught by Osaki, in order to provide added support when collapsing the cart.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazmark (US 4,221,402).

Kazmark teaches all aspects of the claimed invention as discussed above for claim 1, except the legs of the cart being constructed of "lightweight" material of aluminum or plastic.

The cart of Kazmark is taught by be made from flexible metal rod and it would have been obvious to one of ordinary skill in the art to provide a lightweight aluminum as a material for flexible metal rod or to provide a flexible alternative material such as plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

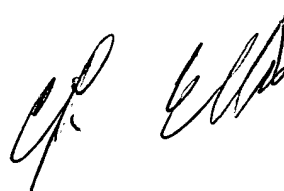
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E Campbell whose telephone number is (703) 605-4264. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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